

APR 25 2001

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

**Michael N. Milby**  
Clerk of Court

**COPY**

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**VS.**

CIVIL ACTION NO. B-CV-96-177

**RIDDELL SPORTS, INC.  
RIDDELL, INC.  
ALL AMERICAN SPORTS CORPORATION  
D/B/A RIDDELL/ALL AMERICAN  
AND CHRIS HOODMAN**

## DEFENDANTS' MOTION FOR BIFURCATED TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

**RIDDELL, INC. AND ALL AMERICAN SPORTS CORPORATION**, askss the court to bifurcate this trial separating the trial of the liability facts from the trial of the damages. pursuant to Federal Rules of Civil Procedure 42(b).

1. "The district court may bifurcate a trial provided that this ruling 1) serves the interests of judicial economy or is done to prevent prejudice to a party; 2) does not unfairly prejudice the non-moving party; and 3) does not violate the 7<sup>th</sup> Amendment." Krocka v. City of Chicago, 203 F3d 507, 516 (7<sup>th</sup> Cir.2000).
2. This product liability action alleges improper design of a football helmet. Plaintiff, as a result of a closed brain injury, has been in a vegetative state since football play on August 24, 1995. The evidence on damages will be highly emotional, sympathy provoking and prejudicial and will likely effect a jury's decision on the terms of liability.
3. It is fully expected that Plaintiffs will be using a "day in a life video" to demonstrate Plaintiff's condition. This video has no bearing whatsoever on the liability aspect of this matter. Specifically, liability deals mainly with the design of a football helmet and a play in a football scrimmage. While damages will solely depend on Plaintiff's physical condition. The evidence on damages has no relevance to the liability



issues.

4. It is fully expected that Plaintiffs will want to parade Jose Rodriguez in front of the jury in his bed making involuntary moans on a periodic basis. He did this in the last trial. Plaintiff is unaware of his sounds, these are mere reflexes.
5. Trying the liability damages separately will avoid prejudicial evidence from clouding the jury's judgment. Furthermore, it will not require the reintroduction of similar evidence which will require a jury to pass differently on any particular issues. Bifurcation will eliminate or reduce the presentation of lengthy evidence. Specifically, if as Defendants believe, no liability is found, there will be no need for the damages portion of this trial. If in the unlikely event liability is established, the trial may continue with presentations on damages. See McDaniel v. Anheuser-Busch, Inc., 987 F2d 298, 304 fn. 19 (5th Cir. 1993).
6. If there is any relevance to liability issues of Plaintiff's day in the life video or Plaintiff's presence in the courtroom such is far outweighed by the prejudicial effect of such video or presence.

RIDDELL, INC. AND ALL AMERICAN SPORTS CORPORATION request that this cause of action be bifurcated for trial in a manner convenient with the Court so that this matter can be tried fairly and nonprejudicially to Defendants and Plaintiffs alike.

Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**

This is to certify that I had a conference with Plaintiffs' counsel, Rex Blackburn, and he refused to agree to this motion.



Robert Summers

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above was forwarded by telefax transmission and certified mail, return receipt requested to counsel of record on this the 25<sup>th</sup> day of April, 2001.

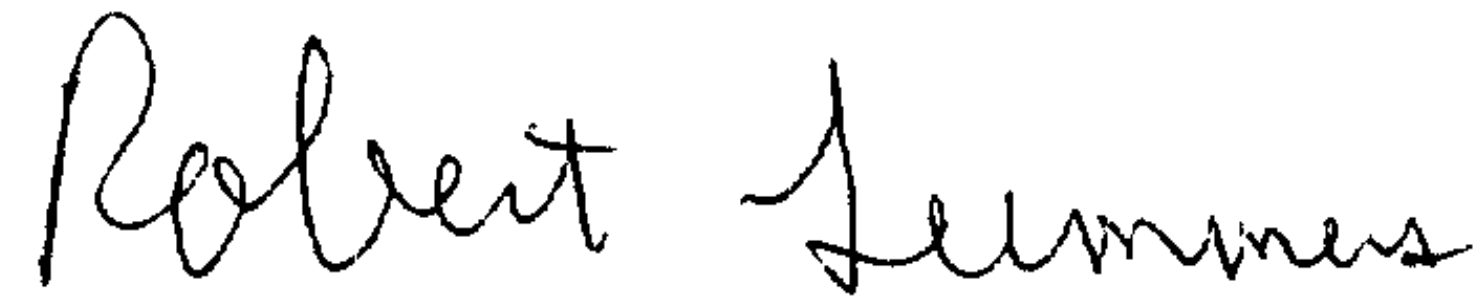
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A handwritten signature in cursive script that reads "Robert Summers". The signature is written in black ink and is positioned above a horizontal line.

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Robert Summers



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

**RAQUEL O. RODRIGUEZ  
AND JOSE L. RODRIGUEZ**

**VS.**

**RIDDELL SPORTS, INC.  
RIDDELL, INC.  
ALL AMERICAN SPORTS CORPORATION  
D/B/A RIDDELL/ALL AMERICAN  
AND CHRIS HOODMAN**

**\*\*\*\*\***

**CIVIL ACTION NO. B-CV-96-177**

## ORDER GRANTING DEFENDANT'S MOTION TO BIFURCATE

On this \_\_\_\_\_ day of \_\_\_\_\_, 1999, came the Defendant's Motion to Bifurcate Trial. The Court having considered the pleadings on file herein, evidence, and arguments of counsel, is of the opinion that said motion should be granted;

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Bifurcate Trial is GRANTED.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

JUDGE PRESIDING